IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JEAN JOCELYN MERILIEN,	**:**	**PRISONER HABEAS CORPUS**
GDC ID # 1048466,	**:**	**28 U.S.C. § 2254**
Petitioner,	**:**	
	:	
v.	**:**	
	:	
DEKALB COUNTY	**:**	
DISTRICT ATTORNEY,	**:**	**CIVIL ACTION NO.**
Respondent.	**:**	**1:15-CV-4512-WSD-AJB**

UNITED STATES MAGISTRATE JUDGE'S
FINAL REPORT AND RECOMMENDATION

Petitioner, Jean Jocelyn Merilien, confined in Hays State Prison in Trion, Georgia, has submitted a petition for a writ of error *coram nobis*, and the Clerk has docketed this case as a 28 U.S.C. § 2254 habeas corpus action. [Doc. 1.] Petitioner challenges his January 31, 2000, DeKalb County conviction for possession of a firearm by a convicted felon. [*Id.* at 3.]

"A writ of error *coram nobis* is not available in federal court to directly attack a state criminal judgment." *Wolfson v. Florida*, 184 Fed. Appx. 866, 866 (11th Cir. June 14, 2006) (per curiam) (citing *Theriault v. State of Mississippi*,

390 F.2d 657 (5th Cir. 1968) (per curiam)[1]). Accordingly, the undersigned will review the matter as a § 2254 petition.

Pursuant to Rule 4 of the Rules Governing Section 2254 Cases, summary dismissal of a habeas petition is proper when the petition and the attached exhibits plainly reveal that relief is not warranted. *See McFarland v. Scott*, 512 U.S. 849, 856 (1994) (stating that Rule 4 dismissal is appropriate when petition "appears legally insufficient on its face").

I. Discussion

Petitioner previously filed a construed § 2254 petition challenging his January 31, 2000, DeKalb County conviction for possession of a firearm by a convicted felon, and the District Court dismissed that petition for lack of jurisdiction because Petitioner was no longer in custody under that conviction. *See* Order, *Merilien v. Georgia*, No. 1:12-cv-3598-RLV (N.D. Ga. Dec. 13, 2012) (adopting Final Report and Recommendation of Nov. 20, 2012). Petitioner did not appeal.

Unless the Eleventh Circuit authorizes a second or successive § 2254 petition, the District Court lacks jurisdiction to consider such a petition.

[1] Decisions of the Fifth Circuit rendered on or before September 30, 1981, are binding precedent in the Eleventh Circuit. *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981) (en banc).

See 28 U.S.C. § 2244(b)(3)(A); *Morales v. Fla. Dep't of Corr.*, 346 Fed. Appx. 539, 540 (11th Cir. Sept. 29, 2009) (per curiam) (citing *Farris v. United States*, 333 F.3d 1211, 1216 (11th Cir. 2003)). Petitioner failed to obtain authorization from the Eleventh Circuit for consideration of a second or successive § 2254 petition. Therefore, the District Court lacks jurisdiction to consider the present petition.

II. Certificate of Appealability (COA)

Pursuant to Rule 11 of the Rules Governing Section 2254 Cases, "[t]he district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. . . . If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2)." Section 2253(c)(2) states that a certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." A substantial showing of the denial of a constitutional right "includes showing that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (internal quotation marks omitted).

When the district court denies a habeas petition on procedural

> grounds without reaching the prisoner's underlying constitutional claim . . . a certificate of appealability should issue only when the prisoner shows both that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right *and* that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.

Jimenez v. Quarterman, 555 U.S. 113, 118 n.3 (2009) (citing *Slack*, 529 U.S. at 484) (internal quotation marks omitted).

A COA should be denied because it is not debatable that Petitioner must obtain authorization from the Court of Appeals for consideration of a second or successive § 2254 petition. If the Court adopts this recommendation and denies a COA, Petitioner is advised that he "may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22." Rule 11(a), Rules Governing Section 2254 Cases in the United States District Courts.

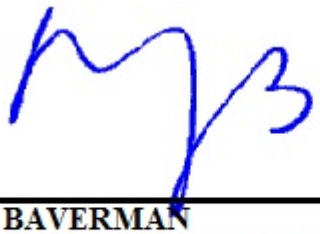
III. Conclusion

For the reasons stated above,

IT IS RECOMMENDED that (1) this action be **DISMISSED** pursuant to Rule 4; and (2) a COA be **DENIED**.

The Clerk is **DIRECTED** to terminate the referral to the undersigned.

IT IS SO RECOMMENDED and DIRECTED, this 15th day of January, 2016.



ALAN J. BAVERMAN
UNITED STATES MAGISTRATE JUDGE